

Honorable Ricardo S. Martinez

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

| | | |
|---|---|-----------------------|
| TANA IHRIG and MARK IHRIG, |) | NO. 2:06-cv-00512-RSM |
| |) | |
| Plaintiffs, |) | ANSWER OF RESURGENT |
| |) | CAPITAL SERVICES, LP |
| v. |) | |
| |) | |
| WASHINGTON MUTUAL BANK, formerly |) | |
| known as PROVIDIAN NATIONAL BANK; |) | |
| NEW AMERICAN CAPITAL, INC., a |) | |
| Delaware corporation, formerly known as |) | |
| PROVIDIAN FINANCIAL CORPORATION; |) | |
| RICHARD J. BOUDREAU & ASSOCIATES, |) | |
| LLC, a Massachusetts limited liability |) | |
| company; LVNV FUNDING LLC, a Delaware |) | |
| limited liability company; PHILLIPS & |) | |
| COHEN ASSOCIATES, LTD, a New Jersey |) | |
| corporation; and RESURGENT CAPITAL |) | |
| SERVICES, LP, a Delaware limited |) | |
| partnership, |) | |
| |) | |
| Defendants. |) | |

Defendant Resurgent Capital Services LP (hereinafter "Resurgent") as and for its Answer to the Complaint of Plaintiffs Tana Ihrig and Mark Ihrig (hereinafter "Plaintiffs") denies each and every allegation unless otherwise specifically admitted herein or otherwise qualified and states and alleges as follows:

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1 1. In response to the allegations set forth in Paragraph 1 of Plaintiffs' Complaint,
 2 Resurgent admits that Plaintiffs have brought an action against Defendants alleging
 3 violations of the Fair Credit Reporting Act ("FCRA"), 15 U.S.C. § 1681 et seq., the Fair Debt
 4 Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692 et seq., and various state laws, but
 5 denies that it has violated any law. Resurgent states that it has insufficient information and
 6 knowledge to either admit or deny the remaining allegations and therefore denies the same.

7 2. In response to the allegations set forth in Paragraph 2 of Plaintiffs' Complaint,
 8 Resurgent admits that jurisdiction and venue are asserted under the statutory sections
 9 referenced therein, but denies that jurisdiction or venue are appropriate as Resurgent has not
 10 violated any law.

11 3. In response to the allegations set forth in Paragraph 3 of Plaintiffs' Complaint,
 12 Resurgent admits that Plaintiffs allegedly owe a claim. Resurgent states that it has
 13 insufficient information and knowledge to either admit or deny the remaining allegations set
 14 forth in said Paragraph and therefore denies the same.

15 4. In response to the allegations set forth in Paragraph 4 of Plaintiffs' Complaint,
 16 Resurgent states that to the extent the allegations are directed against it, Resurgent admits
 17 that at times it is a debt collector, but it has insufficient information and knowledge to either
 18 admit or deny whether it acted as a debt collector in the instant matter. To all other extents,
 19 Resurgent states that it has insufficient information and knowledge to either admit or deny
 20 the remaining allegations set forth in said Paragraph and therefore denies the same.

21 5. Resurgent states that it has insufficient information and knowledge to either
 22 admit or deny the allegations set forth in Paragraph 5 of Plaintiffs' Complaint and therefore
 23 denies the same.

24 6. Resurgent states that it has insufficient information and knowledge to either
 25 admit or deny the allegations set forth in Paragraph 6 of Plaintiffs' Complaint and therefore
 26 denies the same.

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7. In response to the allegations set forth in Paragraph 7 of Plaintiffs' Complaint, Resurgent admits that it is a limited partnership organized under the laws of the State of Delaware with offices in the locations alleged in South Dakota and South Carolina.

Resurgent denies that it currently has an office in Houston, Texas. Resurgent admits that it is licensed with the State of Washington Department of Licensing as an out-of-state collection agency and further admits that on occasion it publishes credit information and attempts to collect debt in Washington state as well as other states.

8. Resurgent states that it has insufficient information and knowledge to either admit or deny the allegations set forth in Paragraph 8 of Plaintiffs' Complaint and therefore denies the same.

9. Resurgent states that it has insufficient information and knowledge to either admit or deny the allegations set forth in Paragraph 9 of Plaintiffs' Complaint and therefore denies the same.

10. Resurgent states that it has insufficient information and knowledge to either admit or deny the allegations set forth in Paragraph 10 of Plaintiffs' Complaint and therefore denies the same.

11. In response to the allegations set forth in Paragraph 11 of Plaintiffs' Complaint, on information and belief, Resurgent admits that Defendant Phillips and Cohen Associates, Ltd. ("Phillips") contacted Plaintiffs. Resurgent denies that Phillips did so on behalf of Resurgent. As to all other allegations, Resurgent has insufficient information and knowledge to either admit or deny and therefore denies the same.

12. Resurgent states that it has insufficient information and knowledge to either admit or deny the allegations set forth in Paragraph 12 of Plaintiffs' Complaint and therefore denies the same.

13. Resurgent states that it has insufficient information and knowledge to either admit or deny the allegations set forth in Paragraph 13 of Plaintiffs' Complaint and therefore denies the same.

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1 14. In response to the allegations set forth in Paragraph 14 of Plaintiffs'
2 Complaint, Resurgent admits that Resurgent and LVNV Funding LLC are affiliated, yet
3 separate entities and denies all remaining allegations against it. To all other extents,
4 Resurgent has insufficient information and knowledge to either admit or deny the remaining
5 allegations set forth in Paragraph 14 of Plaintiffs' Complaint and therefore denies the same.

6 15. Resurgent states that it has insufficient information and knowledge to either
7 admit or deny the allegations set forth in Paragraph 15 of Plaintiffs' Complaint and therefore
8 denies the same.

9 16. Resurgent states that it has insufficient information and knowledge to either
10 admit or deny the allegations set forth in Paragraph 16 of Plaintiffs' Complaint and therefore
11 denies the same.

12 17. In response to the allegations set forth in Paragraph 17 of Plaintiffs'
13 Complaint, Resurgent denies all allegations against it. To all other extents, Resurgent states
14 that it has insufficient information and knowledge to either admit or deny the allegations
15 therein set forth and therefore denies the same.

16 18. In response to the allegations set forth in Paragraph 18 of Plaintiffs'
17 Complaint, Resurgent denies all allegations against it. To all other extents, Resurgent states
18 that it has insufficient information and knowledge to either admit or deny the allegations
19 therein set forth and therefore denies the same.

20 19. In response to the allegations set forth in Paragraph 19 of Plaintiffs'
21 Complaint, Resurgent denies all allegations against it. To all other extents, Resurgent states
22 that it has insufficient information and knowledge to either admit or deny the allegations
23 therein set forth and therefore denies the same.

24 20. In response to the allegations set forth in Paragraph 20 of Plaintiffs'
25 Complaint, Resurgent denies all allegations against it. To all other extents, Resurgent states
26 that it has insufficient information and knowledge to either admit or deny the allegations
27 therein set forth and therefore denies the same.

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21. Resurgent states that it has insufficient information and knowledge to either admit or deny the allegations set forth in Paragraph 21 of Plaintiffs' Complaint and therefore denies the same.

22. In response to the allegations set forth in Paragraph 22 of Plaintiffs' Complaint, Resurgent denies all allegations against it. To all other extents, Resurgent states that it has insufficient information and knowledge to either admit or deny the allegations therein set forth and therefore denies the same.

23. In response to the allegations set forth in Paragraph 23 of Plaintiffs' Complaint, Resurgent denies all allegations against it. To all other extents, Resurgent states that it has insufficient information and knowledge to either admit or deny the allegations therein set forth and therefore denies the same.

24. In response to Paragraph 24 of Plaintiffs' Complaint, Resurgent restates and realleges paragraphs 1 through 23.

25. In response to the allegations set forth in Paragraph 25 of Plaintiffs' Complaint, and all its subparts, to the extent that the allegations constitute a conclusion of law, no response is necessary. To the extent a response is necessary, Resurgent denies all allegations against it. To all other extents, Resurgent states that it has insufficient information and knowledge to either admit or deny the allegations therein set forth and therefore denies the same.

26. In response to the allegations set forth in Paragraph 26 of Plaintiffs' Complaint, Resurgent denies all allegations against it. To all other extents, Resurgent states that it has insufficient information and knowledge to either admit or deny the allegations therein set forth and therefore denies the same.

27. In response to Paragraph 27 of Plaintiffs' Complaint, Resurgent restates and realleges paragraphs 1 through 26.

28. In response to the allegations set forth in Paragraph 28 of Plaintiffs' Complaint, and all its subparts, to the extent that the allegations constitute a conclusion of

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1 law, no response is necessary. To the extent a response is necessary, Resurgent denies all
 2 allegations against it. To all other extents, Resurgent states that it has insufficient information
 3 and knowledge to either admit or deny the allegations therein set forth and therefore denies
 4 the same.

5 29. In response to Paragraph 29 of Plaintiffs' Complaint, Resurgent states that the
 6 allegations constitute a conclusion of law and as such no response is necessary. To the extent
 7 that a response is required, Resurgent states that it has insufficient information and
 8 knowledge to either admit or deny the allegations set forth and therefore denies the same.

9 30. Resurgent states that it has insufficient information and knowledge to either
 10 admit or deny the allegations set forth in Paragraph 30 of Plaintiffs' Complaint and therefore
 11 denies the same.

12 31. In response to Paragraph 31 of Plaintiffs' Complaint, Resurgent states that the
 13 allegations constitute a conclusion of law and as such no response is necessary. To the extent
 14 that a response is required, Resurgent denies all allegations against it. To all other extents,
 15 Resurgent states that it has insufficient information and knowledge to either admit or deny
 16 the allegations therein set forth and therefore denies the same.

17 32. In response to Paragraph 32 of Plaintiffs' Complaint, Resurgent states that the
 18 allegations constitute a conclusion of law and as such no response is necessary. To the extent
 19 that a response is required, Resurgent denies all allegations against it. To all other extents,
 20 Resurgent states that it has insufficient information and knowledge to either admit or deny
 21 the allegations therein set forth and therefore denies the same.

22 33. In response to Paragraph 33 of Plaintiffs' Complaint, Resurgent states that the
 23 allegations constitute a conclusion of law and as such no response is necessary. To the extent
 24 that a response is required, Resurgent states that it has insufficient information and
 25 knowledge to either admit or deny the allegations therein set forth and therefore denies the
 26 same.

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1 34. In response to Paragraph 34 of Plaintiffs' Complaint, Resurgent states that the
 2 allegations constitute a conclusion of law and as such no response is necessary. To the extent
 3 that a response is required, Resurgent denies all allegations against it. To all other extents,
 4 Resurgent states that it has insufficient information and knowledge to either admit or deny
 5 the allegations therein set forth and therefore denies the same.

6 35. In response to the allegations set forth in Paragraph 35 of Plaintiffs'
 7 Complaint, Resurgent denies all allegations against it. To all other extents, Resurgent states
 8 that it has insufficient information and knowledge to either admit or deny the allegations
 9 therein set forth and therefore denies the same.

10 36. In response to the allegations set forth in Paragraph 36 of Plaintiffs'
 11 Complaint, Resurgent denies all allegations against it. To all other extents, Resurgent states
 12 that it has insufficient information and knowledge to either admit or deny the allegations
 13 therein set forth and therefore denies the same.

14 37. In response to Paragraph 37 of Plaintiffs' Complaint, Resurgent restates and
 15 realleges paragraphs 1 through 36.

16 38. Resurgent states that it has insufficient information and knowledge to either
 17 admit or deny the allegations set forth in Paragraph 38 of Plaintiffs' Complaint and therefore
 18 denies the same.

19 39. Resurgent states that it has insufficient information and knowledge to either
 20 admit or deny the allegations set forth in Paragraph 39 of Plaintiffs' Complaint and therefore
 21 denies the same.

22 40. Resurgent states that it has insufficient information and knowledge to either
 23 admit or deny the allegations set forth in Paragraph 40 of Plaintiffs' Complaint and therefore
 24 denies the same.

25 41. Resurgent states that it has insufficient information and knowledge to either
 26 admit or deny the allegations set forth in Paragraph 41 of Plaintiffs' Complaint and therefore
 27 denies the same.

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2 42. Resurgent states that it has insufficient information and knowledge to either
3 admit or deny the allegations set forth in Paragraph 42 of Plaintiffs' Complaint and therefore
4 denies the same.

5 43. Resurgent states that it has insufficient information and knowledge to either
6 admit or deny the allegations set forth in Paragraph 43 of Plaintiffs' Complaint and therefore
7 denies the same.

8 44. Resurgent states that it has insufficient information and knowledge to either
9 admit or deny the allegations set forth in Paragraph 44 of Plaintiffs' Complaint and therefore
10 denies the same.

11 45. Resurgent states that it has insufficient information and knowledge to either
12 admit or deny the allegations set forth in Paragraph 45 of Plaintiffs' Complaint and therefore
13 denies the same.

14 46. Resurgent states that it has insufficient information and knowledge to either
15 admit or deny the allegations set forth in Paragraph 46 of Plaintiffs' Complaint and therefore
16 denies the same.

17 47. In response to the allegations set forth in Paragraph 47 of Plaintiffs'
18 Complaint, Resurgent denies all allegations against it. To all other extents, Resurgent states
19 that it has insufficient information and knowledge to either admit or deny the allegations
20 therein set forth and therefore denies the same.

21 48. In response to Paragraph 48 of Plaintiffs' Complaint, Resurgent restates and
22 realleges paragraphs 1 through 47.

23 49. In response to the allegations set forth in Paragraph 49 of Plaintiffs'
24 Complaint, Resurgent denies all allegations against it. To all other extents, Resurgent states
25 that it has insufficient information and knowledge to either admit or deny the allegations
26 therein set forth and therefore denies the same.

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1 50. In response to the allegations set forth in Paragraph 50 of Plaintiffs'
 2 Complaint, Resurgent denies all allegations against it. To all other extents, Resurgent states
 3 that it has insufficient information and knowledge to either admit or deny the allegations
 4 therein set forth and therefore denies the same.

5 51. In response to the allegations set forth in Paragraph 51 of Plaintiffs'
 6 Complaint, Resurgent denies all allegations against it. To all other extents, Resurgent states
 7 that it has insufficient information and knowledge to either admit or deny the allegations
 8 therein set forth and therefore denies the same.

9 52. In response to the allegations set forth in Paragraph 52 of Plaintiffs'
 10 Complaint, Resurgent denies all allegations against it. To all other extents, Resurgent states
 11 that it has insufficient information and knowledge to either admit or deny the allegations
 12 therein set forth and therefore denies the same.

13 53. In response to the allegations set forth in Paragraph 53 of Plaintiffs'
 14 Complaint, Resurgent denies all allegations against it. To all other extents, Resurgent states
 15 that it has insufficient information and knowledge to either admit or deny the allegations
 16 therein set forth and therefore denies the same.

17 54. In response to the allegations set forth in Paragraph 54 of Plaintiffs'
 18 Complaint, Resurgent denies all allegations against it. To all other extents, Resurgent states
 19 that it has insufficient information and knowledge to either admit or deny the allegations
 20 therein set forth and therefore denies the same.

21 55. In response to the allegations set forth in Paragraph 55 of Plaintiffs'
 22 Complaint, Resurgent denies all allegations against it. To all other extents, Resurgent states
 23 that it has insufficient information and knowledge to either admit or deny the allegations
 24 therein set forth and therefore denies the same.

25 56. In response to Paragraph 56 of Plaintiffs' Complaint, Resurgent restates and
 26 realleges paragraphs 1 through 55.

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1 57. In response to the allegations set forth in Paragraph 57 of Plaintiffs'
2 Complaint, Resurgent denies all allegations against it. To all other extents, Resurgent states
3 that it has insufficient information and knowledge to either admit or deny the allegations
4 therein set forth and therefore denies the same.

5 58. In response to the allegations set forth in Paragraph 58 of Plaintiffs'
6 Complaint, Resurgent denies all allegations against it. To all other extents, Resurgent states
7 that it has insufficient information and knowledge to either admit or deny the allegations
8 therein set forth and therefore denies the same.

9 59. In response to the allegations set forth in Paragraph 59 of Plaintiffs'
10 Complaint, Resurgent denies all allegations.

11 60. In response to Paragraph 60 of Plaintiffs' Complaint, Resurgent admits that
12 Plaintiffs assert the right to amend this Complaint at a later date, but denies that Plaintiffs
13 have the right to amend this Complaint as to Resurgent as it has not violated any law.

14 AFFIRMATIVE DEFENSES

15 FIRST DEFENSE

16 All of Resurgent's actions complied with the Fair Credit Reporting Act ("FCRA"), 15
17 U.S.C. § 1681 et seq., the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692
18 et seq., and Washington state laws, to the extent said laws are applicable to this matter, if
19 they are applicable at all.

20 SECOND DEFENSE

21 Any violation of the law or damage suffered by Plaintiffs, which Resurgent denies,
22 was due to the affirmative actions and/or omissions of others and does not give rise to any
23 liability of Resurgent.

24 THIRD DEFENSE

25 Any violation of the law or damage suffered by Plaintiffs, which Resurgent denies,
26 was due to the affirmative actions and/or omission of others and does not give rise to any
27 claim of damages against Resurgent.

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TWELFTH DEFENSE

Defendants' state law claims are barred by 15 U.S.C. § 1681h(e).

RESERVATION OF DEFENSES

Resurgent reserves the right to assert such other affirmative defenses available pursuant to the Federal Rules of Civil Procedure as applicable as may be revealed through disclosure and discovery in this matter.

WHEREFORE, Resurgent prays for an order and judgment of this Court in its favor against Plaintiffs as follows:

1. Dismissing all causes of action against Resurgent with prejudice and on the merits;

Awarding Resurgent such other and further relief as the Court deems just and equitable.

DATED this 1st day of June, 2006.

/s/ Stephen A. Bernheim

Stephen A. Bernheim, WSBA #15225
Attorney for Defendants LVNV Funding LLC
and Resurgent Capital Services, LP

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